

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

DR. FREDERICK JOSEPH LANNAK,

Plaintiff,

v.

Civil Action No. 06-180 (JJF)

U.S. SENATOR JOSEPH BIDEN,  
U.S. SENATOR THOMAS CARPER,  
CONGRESSMAN MICHAEL CASTLE,

Defendants.

**DEFENDANTS' MOTION TO DISMISS**

Defendants United States Senator Joseph R. Biden, Jr., United States Senator Thomas R. Carper, and United States Representative Michael N. Castle, through counsel, hereby respectfully move this Court, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss plaintiff's complaint with prejudice as to all claims.<sup>1</sup>

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<sup>1</sup> Along with local counsel from the United States Attorney's Office, attorneys from the Senate Legal Counsel are appearing in this action on behalf of Senators Biden and Carper and attorneys from the Office of General Counsel for the U.S. House of Representatives are appearing on behalf of Representative Castle.

Appearance by attorneys from the Office of Senate Legal Counsel in this action is pursuant to 2 U.S.C. §§ 288b(a), 288c(a), and Senate Resolution 490, 109th Cong., 2<sup>nd</sup> Sess., *reprinted in* 152 Cong. Rec. S5029 (daily ed. May 23, 2006). Section 288l(b) of title 2 of the United States Code provides that attorneys in the Office of Senate Legal Counsel "shall be entitled . . . to enter an appearance in any proceeding before any court of the United States . . . without compliance with any requirement for admission to practice before such court . . . ."

Similarly, attorneys in the Office of House General Counsel are "entitled, for the purpose of performing [their] functions, to enter an appearance in any proceeding before any court of the United States . . . without compliance with any requirement for admission to practice before such court . . . ." 2 U.S.C. § 130f(a).

Plaintiff's complaint asserting a cause of action under the Age Discrimination Act fails to state a claim against the defendants. First, plaintiff's allegations that defendants violated the Age Discrimination Act fail to state a claim because that Act does not cover the actions of United States Senators or Representatives. *See* 42 U.S.C. §§ 6101-6102, 6107. In addition, the Age Discrimination Act provides for a cause of action for equitable relief only, and thus does not permit plaintiff's sole claim seeking only money damages. *See id.* § 6104(e)(1). Further, plaintiff has failed to exhaust his administrative remedies prior to bringing his suit as required by the Age Discrimination Act. *See id.* § 6104(e)(2).

The complaint also should be dismissed because allegations such as plaintiff's here that a Member of Congress has declined a request for assistance from a constituent do not state any cognizable claim. *See Richards v. Harper*, 864 F.2d 85, 88 (9<sup>th</sup> Cir. 1985); *McDonough v. Ney*, 599 F. Supp. 679, 683 (D. Maine 1984).

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For these reasons, which are explained more fully in the accompanying Brief in Support of Defendants' Motion to Dismiss, plaintiff's complaint should be dismissed with prejudice.

Respectfully submitted,

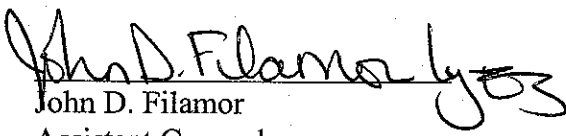
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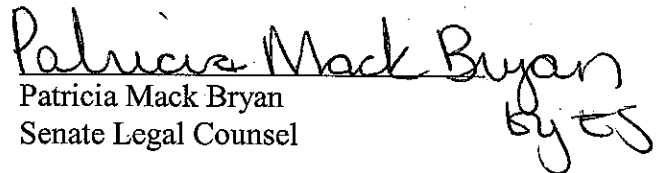
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Dated: June 21, 2006

  
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Defendants.

Civil Action No. 06-180 (JJF)

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

Upon consideration of the Defendants' Motion to Dismiss and all briefing thereto,  
it is on this \_\_\_\_\_ day of \_\_\_\_\_, 2006,

HEREBY ORDERED that Defendants' Motion to Dismiss is GRANTED; and it  
is further

ORDERED that plaintiff's complaint is DISMISSED WITH PREJUDICE.

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UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

It is hereby certified that on this 26<sup>th</sup> day of June, 2006, I caused to be filed the foregoing **DEFENDANTS' MOTION TO DISMISS** and **Proposed ORDER** with the Clerk of Court using the Court's electronic filing system (ECF), and that I also caused to be sent via United States Mail, postage prepaid, these documents to the following non-registered party:

Dr. Frederick Joseph Lannak  
126D Chestnut Crossing Drive  
Newark, DE 19713

Plaintiff *pro se*

  
ELLEN W. SLIGHTS